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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re E.S., a Person Coming Under the
Juvenile Court Law.

B207159

(Los Angeles County
Super. Ct. No. PJ40202)

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff and Respondent,

v.

E.S.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County, Mark R. Frazin, Juvenile Court Referee. Affirmed as modified.

Torres & Torres and Tonja R. Torres, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Scott A.

Taryle and Stephanie A. Miyoshi, Deputy Attorneys General, for Plaintiff and Respondent.

After suffering a sustained juvenile adjudication for first degree robbery in violation of Penal Code section 459, minor E.S. (appellant) was placed on home probation, subject to certain terms and conditions. Appellant appeals from the juvenile court's order imposing a maximum confinement term of six years and from certain probation conditions specified in the order. Appellant contends the maximum confinement term must be stricken, as must the probation condition prohibiting him from using or possessing poisons, because neither was included in the judgment as orally pronounced by the juvenile court. Appellant further contends the probation conditions prohibiting him from using or possessing narcotics, being in the presence of any unlawfully armed person, participating in any type of gang activity, and possessing any dangerous or deadly weapon were vague and overbroad, violating his state and federal constitutional rights, and that these conditions must be modified to correct the constitutional defects.¹

We modify the juvenile court's order as set forth below and affirm the order as modified.

DISCUSSION

1. Maximum confinement term

Welfare and Institutions Code section 726, subdivision (c) provides that when a minor is removed from the physical custody of his parent or custodian as a result of criminal violations sustained under Welfare and Institutions Code section 602, "the order shall specify that the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed upon an adult convicted of the offense" (Welf. & Inst. Code, § 726, subd. (c).) In this case, appellant was not removed from the physical custody of his parent, but was placed on

¹ Appellant's failure to object to the challenged probation conditions on constitutional grounds in the juvenile court below did not result in a forfeiture of the claim on appeal. (*In re Sheena K.* (2007) 40 Cal.4th 875, 889.)

home probation. The statute accordingly did not authorize the juvenile court to specify a maximum term of confinement, and that term should be stricken from the court's minute order. (*In re Matthew A.* (2008) 165 Cal.App.4th 537, 541.)

2. Condition not to “use or possess . . . poisons”

The juvenile court's minute order includes, as a condition of appellant's probation, a prohibition against the use or possession of poisons. That condition was not included, however, in the juvenile court's oral pronouncement of appellant's probation conditions at the disposition proceeding. If a judgment in the minutes fails to reflect accurately the judgment pronounced by the court, the error is clerical and the record may be corrected at any time. (*People v. Mesa* (1975) 14 Cal.3d 466, 471.) The minute order accordingly should be amended to delete the condition regarding poisons.

3. Condition “not to use or possess narcotics or controlled substances”

The juvenile court's minute order also includes a probation condition that prohibits appellant from using or possessing narcotics and controlled substances. Appellant argues that this condition is unconstitutionally overbroad because it contains no exception for narcotics and controlled substances legally prescribed by a doctor.

“A juvenile court enjoys broad discretion to fashion conditions of probation for the purpose of rehabilitation and may even impose a condition of probation that would be unconstitutional or otherwise improper so long as it is tailored to specifically meet the needs of the juvenile. [Citation.]” (*In re Josh W.* (1997) 55 Cal.App.4th 1, 5.) The Attorney General (respondent) correctly notes that appellant had a history of substance abuse, including possession and use of cocaine, which justifies a probation condition generally prohibiting appellant from possessing or using narcotics or controlled substances. But the condition is written so broadly that it also prohibits possession and use of medically necessary or prescribed narcotics or controlled substances. We find no rehabilitative purpose in preventing appellant from using necessary medication in accordance with a valid prescription. The probation condition should be modified to prohibit the use or possession of narcotics, controlled substances, or related paraphernalia, “except in accordance with a valid prescription.”

4. Conditions “not to participate in any type of gang activity” and not to “remain in the presence of any unlawfully armed person”

Appellant contends, and respondent agrees, that the probation conditions prohibiting appellant from being in the presence of an unlawfully armed person and from participating in any type of gang activity must be amended to include a knowledge requirement.² The conditions should be modified to prohibit appellant from being in the presence of persons known to him to be unlawfully armed and to prohibit him from participating in any type of known gang activity. (See *In re Justin S.* (2001) 93 Cal.App.4th 811, 816 [probation condition prohibiting minor from associating with gang members is unconstitutionally vague and overbroad and must be narrowed to known gang members].)

5. Condition not to “have any dangerous or deadly weapons in your possession”

Appellant contends the probation condition prohibiting him from possessing any dangerous or deadly weapon is unconstitutionally vague and overbroad because any item can be a dangerous weapon if so used and he cannot reasonably determine what objects might constitute such weapons.

“The concept of unconstitutional vagueness is related to the concept of unconstitutional overbreadth The underlying concern of the vagueness doctrine is the core due process requirement of adequate *notice*: [¶] “No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids.” [Citations.] The operative corollary is that “a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law.” [Citation.][’] [¶] . . . [¶] A probation condition is subject to the ‘void for vagueness’

² Although these probation conditions, as listed in the juvenile court’s minute order, contain a knowledge requirement, the court’s oral pronouncement did not. Because the court’s oral pronouncement of the probation conditions is controlling, (*People v. Price* (2004) 120 Cal.App.4th 224, 242), the defective conditions must be modified to include a knowledge element. (*People v. Mesa, supra*, 14 Cal.3d at p. 471.)

doctrine, and thus ‘must be sufficiently precise for the probationer to know what is required of him’ [Citations.]” (*People v. Lopez* (1998) 66 Cal.App.4th 615, 630.) But “if the terms have a plain commonsense meaning, which is well settled, the statute is not vague.” (*People v. Rodriguez* (1975) 50 Cal.App.3d 389, 398.)

We conclude that people of common intelligence know what is a deadly or dangerous weapon. While it is true that many objects, as appellant asserts, are not “inherently dangerous” but have been found to be deadly weapons,³ those items become dangerous only by the manner in which they were used. What makes these objects dangerous weapons is the intention of the user, which intention the user obviously knows and of which he or she cannot claim ignorance. With regard to inherently dangerous objects such as guns, or knives, the meaning of “dangerous or deadly weapon” is sufficiently precise so that a person of ordinary intelligence should know their character. This condition is not unconstitutionally vague.

DISPOSITION

The order appealed from is modified to strike the maximum confinement term and the probation condition prohibiting appellant from using or possessing poisons.

The probation condition that appellant not use or possess narcotics or controlled substances is modified to read “do not use or possess narcotics, controlled substances, or related paraphernalia, except in accordance with a valid prescription.”

The condition prohibiting appellant from participating in any gang activity is modified to state “do not participate in any type of known gang activity.”

The condition prohibiting appellant from remaining in the presence of anyone unlawfully armed is modified to state “do not remain in the presence of anyone known to minor to be unlawfully armed.”

³ Among these items are a pillow, a razor blade, an automobile, a large rock and a fingernail file. (See *In re Jose R.* (1982) 137 Cal.App.3d 269, 276, fn. 3.)

The order, as modified, is affirmed.

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_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
DOI TODD

_____, J.
ASHMANN-GERST